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Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
TW-B204
Washington, D.C. 20554

Re: ***Ex Parte* Presentation**
In the Matter of the Federal-State Joint Board on Universal Service,
CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, 98-170 and
NSD File No. L-00-72

Dear Ms. Dortch:

TracFone Wireless, Inc. (TracFone), pursuant to Section 1.1206(b) of the Commission's Rules (47 C.F.R. § 1.1206(b)), hereby submits electronically this *ex parte* presentation in the above-captioned proceedings. The purpose of this *ex parte* presentation is to address certain statements in the record which have been made regarding the purported absence of competitive neutrality in the current revenue-based universal service contribution system.

Throughout this proceeding, it has been TracFone's position that a universal service contribution methodology based on carrier revenues is the most equitable and nondiscriminatory way to fund universal service. TracFone has urged the Commission to focus its efforts on improving the current system rather than abandoning that system in favor of a connection-based charge which would do little other than to exclude entirely or reduce substantially the contribution of many of the nation's leading providers of interstate service and would substantially and unnecessarily increase the operating costs of carriers whose primary mission is service to lower volume and lower income users. TracFone has encouraged the Commission to adjust the revenue-based system by 1) eliminating entirely or at least raising the

wireless safe harbor (it has demonstrated repeatedly that wireless carriers can – and do – identify the originating and terminating locations of calls on invoices sent to their customers); 2) addressing the revenue lag problem which penalizes those carriers with declining interstate revenues while subsidizing those with growing interstate revenues; and 3) by extending contribution responsibility to all providers of interstate telecommunications.

On December 3, 2002, Sprint Corporation submitted an *ex parte* letter in which it complains once again that the current system is “unsustainable” and that it “carves out” certain categories of service providers. Sprint provides two examples of such “carved out” categories: 1) “international only” carriers; and 2) providers of IP telephony. While these categories are exempt from universal service contribution responsibility, their exclusion does not warrant abandonment of a revenue-based system. The reason that so-called “international only” carriers are exempt has nothing to do with the current system, and has everything to do with the manner in which Congress crafted the Communications Act. Section 254(d) of the Act (added to the Act by the Telecommunications Act of 1996) provides that “[e]very telecommunications carrier that provides interstate telecommunications service shall contribute” In short, Congress excluded international only carriers from universal service contribution responsibility by limiting the obligation to interstate service providers. The Commission itself acknowledged the unfairness of that limitation. In its initial universal service report and order (In the Matter of Federal-State Joint Board on Universal Service, 12 FCC Rcd 8776 (1997)), the Commission stated that it “. . . would prefer a more competitively neutral outcome, all other things being equal, but the statute precludes us from assessing contributions on the revenues of purely international carriers providing service in the United States, even though we believe that they, too, benefit from universal service.” *Id.* at ¶ 779. Since Congress determined that international only carriers should not be subject to universal service funding responsibility, it should be left to Congress to eliminate that exclusion if that is its will.

The second category of “carved out” carriers identified by Sprint – providers of IP telephony – easily can be addressed by the Commission within the parameters of a revenue-based system. As the Commission itself noted more than four years ago, phone-to-phone IP telephony bears the characteristics of telecommunications service. See Federal-State Joint Board on Universal Service (Report to Congress), 13 FCC Rcd 11501 (1998) at ¶ 89. In that *Report to Congress*, the Commission acknowledged that such IP telephony should be subject to universal service contribution obligations, stating as follows:

With regard to universal service contributions, to the extent we conclude that certain forms of phone-to-phone IP telephony are interstate “telecommunications,” and to the extent that providers of such services are offering those services directly to the public for a fee, those providers would be “telecommunications carriers.” Accordingly, those providers would fall within section 254(d)’s mandatory requirement to contribute to universal service mechanisms.

Id., at ¶ 92 (emphasis added).

Thus, as the Commission has acknowledged, the exemption for IP telephony providers can and should be rectified, and it can be done without abandonment of the revenue-based system.

If there are questions about the information contained in this letter, please communicate directly with undersigned counsel for TracFone.

Sincerely,

Mitchell F. Brecher
Counsel for TracFone Wireless, Inc.

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